



Business Improvement Grant Program Memorandum of Agreement

[Insert Business Name]
[Insert Address], Chula Vista, CA [Insert ZIP]

This Business Improvement Grant Program Memorandum of Agreement ("Agreement") is entered into on this **[Insert Date]**. This agreement is between the Chula Vista Redevelopment Agency ("Grantor"), and **[Insert Business Name]**, ("Grantee"). Individually, Grantor and Grantee may be referred to as "Party" and collectively as "Parties". In consideration of the promises set forth herein, the Parties agree comply with the following terms and conditions:

RECITALS

The following recitals are a substantive part of this Agreement:

WHEREAS, the Grantor desires to provide financial assistance to improve the aesthetics and stimulate the economy of Chula Vista's business districts by assisting property and business owners to improve or restore the exterior of a building, provide community or security enhancements, or relocate businesses to Chula Vista's business districts; and

WHEREAS, the Grantor intends to provide such financial assistance in the form of a grant; and

WHEREAS, prior to the approval of a grant, a property or business owner desiring such grant must complete a Business Improvement Grant Overview ("Overview") and Business Improvement Grant Application ("Application"), both included herein by this reference; and

WHEREAS, following the submittal of the Overview and Application, the Grantor shall review the Overview, Application, and the project description provided therewith ("Project"); and

WHEREAS, the Grantor shall determine whether the Project satisfies the purpose of the grant, add conditions to the Project, if Grantor finds additional conditions are necessary, and determine whether to approve a grant to the property or business owner; and

WHEREAS, if approved, the grant shall be made subject to the terms and conditions of this Agreement, including any attachment hereto; and

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Grantor and Grantee agree as follows:



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I. DEFINITIONS

Approved Expenditures: Eligible Expenses for which the Grantee has made payment

Eligible Expenses: Those expenses identified in the Business Improvement Grant Overview as eligible for reimbursement, which have been expended prior to June 30, 2011

II. GRANTEE OBLIGATIONS

A. Business Requirements:

1. **1 Year Guarantee:** Grantee shall continue or ensure that its successor in interest continues business operations of the **Insert Business/Center Name** ("Business/Center") for a minimum of 1 year from the date on which the grant is received by the Grantee.
2. **Best Efforts:** In the event that a tenant of the **Insert Business/Center Name** terminates its association with the **Insert Business/Center Name**, whether by allowing its lease to expire, terminates its the lease, ceases operation, or moves from the **Insert Business/Center Name**, the Grantee or its successor in interest shall use its best efforts to obtain a new tenant for the unused/empty location within a reasonable time.

B. Improvements:

1. **Approvals:** Prior to commencing work related to any improvement for which this grant was approved, Grantee shall obtain any and all government approvals necessary, including, but not limited to, permits and design review.
2. **Local Preference:** Grantee shall solicit bids from Local Businesses, provide preference to such businesses, and hire locally, whenever possible.
3. **Prevailing Wage:** Grantee shall pay prevailing wage to any contractors and ensure that contractors pay prevailing wage to any and all subcontractors. (Current prevailing wage information is available at the California Department of Industrial Relations website at <http://www.dir.ca.gov/dlsr/PWD/>).
4. **Work:**
 - a. **Scope of Work:** Grantee shall perform all of the work described on the attached Exhibit A, entitled "**Scope of Work.**"



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- b. Conditions: Grantee shall adhere to any and all conditions listed in Exhibit B, entitled "Additional Conditions."
 - c. Reductions in Scope of Work: Upon request from Grantee, City may permit Grantee to reduce the Scope of Work to be performed by the Grantee under this Agreement. Upon doing so, City and Grantee agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction in the Grant associated with said reduction.
5. **Maintenance and Repair:** Following payment of grant funds to Grantee, Grantee shall maintain and repair any and all improvements made under this Agreement.

C. Use of Personage:

- 1. **Permission:** Grantee, by executing this Agreement, agrees that the Grantor shall have the right to use the personage, including name, voice, and photographic images of Grantee and/or the Property for any purpose related to Redevelopment in the City of Chula Vista: this grant, and its terms and conditions; and any activities conducted by the San Diego State University without providing Grantee any compensation therefore.

III. REIMBURSEMENT

A. Requirements:

- 1. **Post Expenditure:** Grant funds shall not be released to Grantee unless and until Approved Expenditures have been made by Grantee and confirmed by Grantor and all the requirements of this Agreement have been met to the satisfaction of the Grantor.
- 2. **Documents:** The following documents must be completed and provided to Grantor prior to reimbursement:
 - a. Reimbursement Request Form: The **Reimbursement Request Form** shall be completed in full and signed by Grantee or authorized representative of Grantee.
 - b. Payroll Reporting Form: The **Payroll Reporting Form** shall be completed in full and shall include proof of payment for Eligible Expenses and clearly demonstrate that the current prevailing wage rate was paid for all work performed under this Agreement.



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- c. Agreement Acknowledging Prevailing Wage Requirement: The **Agreement Acknowledging Prevailing Wage Requirement** shall be completed in full and signed by the Contractor(s).
 - d. Approvals: Grantee shall provide copies of all government approvals required pursuant to Article II, Section B(1).
3. **Inspection:** Grantor has completed an inspection of the Property and confirmed that the Grantee has complied with the terms and conditions of this Agreement, has completed the Scope of Work and any supplemental conditions identified in the **BIG Overview**, and satisfied the intended purpose of this Grant, as determined by the Grantor. Grantee may contact Janice Kluth or any successor at (619) 691-5022 to arrange for an inspection.

B. Timing:

1. **Thirty Days:** Grantor shall reimburse Grantee or Contractor directly for Approved Expenses within thirty (30) calendar days from the date on which Grantee or Contractor, respectively, has complied with all requirements as determined by the Grantor. Grantor shall within thirty (30) calendar days of the submission of a reimbursement request, necessary approvals, and completion of the required inspection, notify the Grantee and/or Contractor if any additional information is necessary prior to making the reimbursement.

IV. INDEMNITY

A. Defense, Idemnity, and Hold Harmless:

1. **Grantee Obligation to Defend, Indemnify, and Hold Harmless:** Except for liability covered in Section A(1), Grantee shall defend, indemnify, protect and hold harmless the Grantor, the City, their elected and appointed officers and employees, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Grantee, its officials, officers, employees, agents, and contractors, arising out of or in connection with the grant, work or improvements performed or made pursuant to this grant, or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. The Grantee shall defend, at Grantee's own cost, expense and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Grantor, the City, their directors, officials, officers, employees, agents and/or volunteers. Grantee shall pay and satisfy any judgment, award or decree that may be rendered against Grantor, the City, their directors,



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officials, officers, employees, agents and/or volunteers, for any and all legal expense and cost incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Grantee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Grantor, the City, their directors, officials, officers, employees, agents, and/or volunteers. This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence or sole willful misconduct of the Grantor, the City, their officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Grantor, the City their agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Grantee, its employees, agents or officers, or any third party.

2. ***Design Professionals:*** For those professionals who are required to be licensed by the state (e.g. architects, landscape architects, surveyors and engineers) ("Design Professionals"), Design Professionals shall defend, indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or relating to any negligence, errors or omissions, recklessness, or willful misconduct of Design Professional, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Design Professional's Services, including without limitation the payment of all consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Design Professional shall defend, at Design Professional's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents, or volunteers. Design Professional shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents, or volunteers, in any such suit, action or other legal proceeding. Design Professional shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Design Professional's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Design Professional, its employees, agents or officers, or any third party. The Design Professional's duty to indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its



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agents, officers or employees. This section in no way alters, affects or modifies the Design Professional's obligation and duties under Section Exhibit A to this Agreement.

B. Indemnification for Enforcement Costs:

1. **Enforcement:** Grantee agrees to pay any and all costs Grantor or City incurs enforcing the indemnity and defense provisions set forth in Section 7, including any and all costs, expenses, attorneys fees and liability incurred by the Grantor, the City, their officers, agents or employees in defending against such claims, whether the same proceed to judgment or not. Grantee's indemnification shall not be limited by any prior or subsequent declaration by the Grantor. Grantee's obligations under this Section shall survive the termination of this Agreement.

C. Survival: Indemnity provisions shall survive the termination of this Agreement.

V. BREACH OF AGREEMENT

A. Grantor Rights:

1. **Termination of Agreement for Cause:** If, through any cause, Grantee shall fail to fulfill in a timely and proper manner Grantee's obligations under this Agreement, or if Grantee shall violate any of the covenants, agreements or stipulations of this Agreement, Grantor shall have the right to terminate this Agreement by giving written notice to Grantee of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination.
2. **Suspension:** In the event of a breach of this Agreement, Grantor may suspend in whole or in part the grant and/or refrain from extending any further assistance to the Grantee until satisfactory assurance of future compliance has been received from Grantee.
3. **Withhold Payment.** Grantor may withhold payment until the breach is corrected.
4. **Other Remedies.** The remedies listed in Sections 1, 2, and 3, above, shall not limit the rights of the Grantor and are intended to supplement any other remedies that may be available at law or in equity.

VI. WAIVER AND RELEASE

- A. Executed Waiver and Release: Concurrent with the execution of this Agreement, Grantee shall provide Grantor with a signed and properly executed copy of the **Waiver and Release**.



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VII. MISCELLANEOUS PROVISIONS

- A. Grantee not authorized to Represent Grantor or City: Unless specifically authorized in writing by the Grantor or the City, Grantee shall have no authority to act as Grantor's or City's agent to bind Grantor or City to any contractual agreements whatsoever.
- B. Notices: All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified herein as the places of business for each of the designated parties.
- C. Entire Agreement: This Agreement, together with the Grant Application, and any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision hereof may be amended, modified, waived or discharged except by an instrument in writing executed by the Party against which enforcement of such amendment, waiver or discharge is sought.
- D. Capacity of Parties: Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.
- E. Governing Law/Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the Federal or State courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance hereunder, shall be the City of Chula Vista.

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Signature Page
To Business Improvement Grant Program
Memorandum of Agreement between the Redevelopment Agency
and Insert Business/Center Name

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms:

GRANTOR:

Redevelopment Agency of the City of Chula Vista

By: _____
Redevelopment Manager

Dated: _____

GRANTEE:

Insert Business/Center Name

By: _____

Its: _____

Dated: _____

Approved as to form:

Glen R. Googins, City Attorney



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EXHIBIT A - SCOPE OF WORK

Insert Business Name

Insert Address, Chula Vista, CA Insert ZIP

The scope of work for the improvements to Insert Business Name includes the following items:

- List Improvement
- List Improvement
- List Improvement
- List Improvement

The estimated cost to complete these improvements is:

\$ Insert Estimate

The following improvements will be made at the owner's expense (include value):

- List Improvement

GRANTEE:

Insert Business Name

By: _____

Its: _____

Dated: _____



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EXHIBIT B - CONDITIONS OF APPROVAL

Insert Business Name
Insert Address, Chula Vista, CA Insert ZIP

The conditions of approval for the improvements to Insert Business Name are as follows:

- List Condition
- List Condition
- List Condition
- List Condition

GRANTOR:

Redevelopment Agency of the City of Chula Vista

By: _____
Redevelopment Manager

Dated: _____

GRANTEE:

Insert Business Name

By: _____

Its: _____

Dated: _____